

Message

From: Bishlawi, Randa [Bishlawi.Randa@epa.gov]
Sent: 7/6/2017 9:42:07 PM
To: Stillman, Sarah [Stillman.Sarah@epa.gov]
Subject: RE: when will you be back at your desk?

Looks good. Thank you.
Please copy Eric on your msg to Nathan and Sarah.

From: Stillman, Sarah
Sent: Thursday, July 06, 2017 4:07 PM
To: Bishlawi, Randa <Bishlawi.Randa@epa.gov>
Subject: when will you be back at your desk?

From: Stillman, Sarah
Sent: Thursday, July 06, 2017 3:33 PM
To: Bishlawi, Randa <bishlawi.randa@epa.gov>
Subject: FW: Draft ACO - USG Red Wing, MN

Internal Deliberation
Attorney-Client Communication

Randa – see my comments below.

Dear Sarah,

Ex. 5 Deliberative Process (DP)

4. As the result of the United States Environmental Protection Agency (USEPA) scrutiny of this Facility, the Regulated Party conducted a modeling exercise that modeled the ambient impact of its actual emissions. On May 1, 2017, the Regulated Party provided USEPA with an air dispersion modeling report that identified modeled exceedances of the 2010 1-hour national ambient air quality standards (NAAQS) for sulfur dioxide (SO₂).
5. USEPA considers the May 1, 2017, modeling exercise reliable evidence of modeled noncompliance with ambient standard.
6. The MPCA finds the results of the May 1, 2017 modeling exercise to be a credible indication of a modeled exceedance of the 2010 1-hr NAAQS for SO₂.
7. The parties recognize that to achieve modeled compliance with the 2010 1-hour NAAQS for SO₂, the Regulated Party will have to make physical and/or operational changes to its Facility.
8. The MPCA and the Regulated Party desire to expeditiously and cooperatively resolve the modeled noncompliance issue, and for the Facility to demonstrate modeled compliance with the 2010 1-hour NAAQS for SO₂.

i. **Concerns:**

- a. This is an enforcement order to ensure compliance with the Minnesota SIP provision Minn. R. 7009.0020 – the language about complying or not complying with the NAAQS does not belong here. MPCA should keep this enforcement order separate from the designation process.
- b. EPA established USG's noncompliance with the MN SIP through modeling, but the objective of this order is for USG to achieve actual compliance with the MN SIP, not just modeled compliance.

ii. **Suggested language:**

- a. Replacing the terms “modeled noncompliance/compliance with the 2010 1-hour NAAQS for SO₂” with “noncompliance/compliance with Minnesota Rule Chapter (Minn. R.) 7009.0020”
 - b. Removing the adjective “modeled” before “noncompliance/compliance” (for instance, see par. 2, page 2, of the order)
2. The Regulated Party agrees to implement all measures identified through the modeling compliance exercise that the Regulated Party relied upon to demonstrate compliance with the 2010 1-hour NAAQS for SO₂, and all associated monitoring, record keeping, and reporting.

2. The language of par. 2(a), page 2, of the order

- a. The Regulated Party agrees to enter into an Amendment to the Administrative Order to govern implementation of the proposed changes that includes proposals for associated monitoring, record keeping, and reporting, and an implementation plan and schedule for completion of those changes by no later than June 30, 2018.
- i. **Concern** – USG's approved modeling protocol has to include the physical and/or operational changes to SO₂ emission sources that are needed to attain compliance with the NAAQS (see par. 1(b), page 2, of the order). The use of the terms “proposed changes” and “proposals for...” is confusing here since the amendment to the order needs to include these physical and/or operational changes and the associated monitoring, record keeping and reporting requirements that have been agreed upon by USG and MPCA.
- ii. **Suggested language:**

- a. The Regulated Party agrees to enter into an Amendment to the Administrative Order to govern implementation of the proposed physical and/or operational changes listed in the approved Protocol that includes proposals for and the associated monitoring, record keeping, and reporting requirements, and an implementation plan and schedule for completion of those changes by no later than June 30, 2018.
3. The language of par. 1(k), page 2, of the order
 - k. The Regulated Party agrees to make any changes to the modeling results report that MPCA identifies to ensure that the results demonstrate modeled compliance.
 - i. **Concern** – this sentence seems to suggest USG could model their way out of noncompliance by making a few changes to their report.
 - ii. **Suggested language** – MPCA should delete this paragraph all together since par. 1(h), page 2, of the order already provides that “[a]fter modeling has commenced the Regulated Party may make minor changes to the final modeling protocol with prior MPCA approval.” Otherwise, we could suggest the following language (although it does have the same meaning as the sentence currently in the order).
 - k. The Regulated Party agrees to make any changes to the modeling results report that MPCA identifies to ensure that the report accurately represents the modeling compliance exercise that the Regulated Party performed~~results demonstrate modeled compliance~~.
4. The use of the term “scrutiny” at par. 4, page 1, of the order
 4. As the result of the United States Environmental Protection Agency (USEPA) scrutiny of this Facility, the Regulated Party conducted a modeling exercise that modeled the ambient impact of its actual emissions. On May 1, 2017, the Regulated Party provided USEPA with an air dispersion modeling report that identified modeled exceedances of the 2010 1-hour national ambient air quality standards (NAAQS) for sulfur dioxide (SO₂).
 - i. **Concern** – USG was not under any particular scrutiny from EPA. The suggestive connotation of this sentence is that EPA may be picking on or singling out this company.
 - ii. **Suggested language** – the term “investigation” can be substituted for “scrutiny”.
5. Several editorial changes – to make this order clearer and more consistent (see attached).

The order is not as detailed as we would have liked, but I think it is a good first step and we will have an opportunity to comment on the amendment. In the meantime, I think it is important to get USG under an enforceable (state) order while there is still momentum, especially given the tight schedule we are working with.

If you would like to see all the comments I had, please let me know and I will send you the document. I am cc'ing Daniel to make sure he knows what is going on.

Let me know if you would like to talk about these comments or if I should send them to anybody else.

Sincerely,

- Sarah

Sarah J. Stillman
Attorney, Office of Regional Counsel

U.S. EPA Region 5
(312) 886-3611
stillman.sarah@epa.gov

CONFIDENTIAL: This email and any attachments may contain information that is privileged, confidential, or otherwise exempt or prohibited from disclosure under applicable law, and they are for the exclusive and confidential use of the intended recipient. If you are not the intended recipient, do not read, print, distribute, or take action in reliance upon this email: notify the sender immediately by return email and promptly delete or otherwise destroy the email and any attachments. U.S. EPA does not waive any privilege by transmission of this email.